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## Freedom and equality as necessary constituents of a liberal democratic state

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## PART TWO: FREEDOM

### Part 2. Freedom



## Chapter 7. Preliminary remarks

7.1 In the first part of this study, I inquired into the meaning of ‘equality’ in a liberal democratic state. It was concluded that basic equality in the guise of basic rationality is indispensable once it is understood that other sorts of (basic) equality to constitute a viable basis are or have at least become insufficient. In this second part, I will, with the results that have been reached in mind, research to what degree there is room for freedom, more specifically, freedom of expression, in a liberal democratic state. Freedom of expression includes, but is not limited to, freedom of speech; it also refers to religious freedom. It seems that the limits of freedom of expression must (at least) be reached once a conflict arises with the postulates of prescriptive equality for precisely the reason that it, prescriptive equality, is itself a constitutive principle: if this should no longer be acknowledged as such, a liberal democratic state in which such a far-reaching freedom is allowed ceases to be a liberal democratic state.

This conclusion cannot be reached as simply as that, however. I will demonstrate that it is necessary to distinguish between acts performed by or on behalf of state institutions on the one hand and private acts on the other. It will be shown that it is justified to grant more freedom in the latter case than in the former. In addition, the contents – what is expressed – must be inquired: this is an important factor to decide what should be allowed.

7.2 Before dealing with the specific issues, however, it is necessary to be clear about the meaning of ‘freedom’. As was mentioned in the introduction, freedom in the sense of ‘negative freedom’ is the notion I consider basic. This is not to be confounded with freedom of movement,<sup>269</sup> which has a greater scope than negative freedom. Freedom of movement means, in its core, unlimited freedom for a person or object, which consists in the mere absence of opposition, be it physical objects or immaterial elements, such as laws that constitute a prohibition.<sup>270</sup> The *extension* of freedom of movement may in this sense be the same (if one forgoes *physical* freedom of movement, which pertains to the first of the two categories just mentioned) as that of negative freedom: under any form of government, some laws to limit negative freedom (and thus freedom of movement) are necessary. A state in which murder and theft were not prohibited would presumably not have to concern itself with the question of whether other acts should be prohibited since it would not even remain in existence long enough to address such transgressions.<sup>271</sup>

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<sup>269</sup> ‘Movement’ is to be taken broadly, encompassing any action one may perform.

<sup>270</sup> Cf. Th. Hobbes, *Leviathan*, Ch. 14 (p. 91), Ch. 21 (pp. 145, 146); *De Cive* (the English version), Ch. 9, § 9 (p. 125).

<sup>271</sup> This statement can in practice be nuanced somewhat; there may, for example, be informal ways (within groups of people or communities) to steer individuals’ behavior. Still, any act to discourage the actions mentioned above must be considered to constitute a prohibition.

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Still, with regard to the *intension* (the meaning), it is useful to make the distinction. The presence of negative freedom is predicated on the existence of a government: the freedom that remains in such a state of affairs is the negative freedom in the specific state.<sup>272</sup> By contrast, freedom of movement does not merely describe this situation but also pertains to the freedom that exists in the state of nature (or *supposedly* exists, if one considers such a condition a merely hypothetical or fictitious one). The distinction may seem to attest to an overly academic disposition, but it is in fact based on a genuine political consideration. Freedom of expression, for example, may be said to be possible only within the context of a state.<sup>273</sup> In the state of nature, this freedom exists *stricto sensu*, of course (in the guise of freedom of – figurative – movement), but absent a government with the protection of a state apparatus to back such a freedom up, the question is pertinent whether it can safely be exercised, and this question would have to be answered in the negative.<sup>274</sup>

**7.3** The downside of this negative freedom is precisely the fact that freedom of movement is limited by a government at all – this takes place in the same realm where negative freedom is granted in the first place. The price for the possibility to use it unencumbered is this limitation. This would seem to be contradictory, ‘unencumbered’ pointing to the absence of a limitation, but it bears on the fact that – through the threat of punishment – *other* individuals (whose freedom is simultaneously protected) are restrained by the government from restraining one’s freedom. That such a restraint cannot be complete, however, is evident from the fact that this would result in freedom being absent, rendering the issue moot. It is precisely the tension between unmitigated freedom on the one hand (which would, in the most extreme scenario, result in anarchy) and complete restraint on the other (which is characteristic of a totalitarian regime) that characterizes a liberal democratic state.

**7.4** In this second part of the study I will seek to answer the question what the extent of the limitations to freedom should be in a liberal democratic state. To that end, I will first inquire the import of freedom in chapter 8, and try to make it clear why granting citizens as much

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<sup>272</sup> Cf. Th. Hobbes, *De Cive* (the English version), Ch. 13, § 15 (p. 165).

<sup>273</sup> This is not to be confused with the conception that the state is also necessary for a full-fledged freedom to come to fruition, as Hegel claims (*Grundlinien der Philosophie des Rechts*, § 260 (pp. 337-339); cf. § 153 (p. 235)). It is not surprising to find Hegel scorning the identification of freedom with the freedom to do whatever one wants (*Grundlinien der Philosophie des Rechts*, § 319 (p. 428)). Hegel defends a view of the state that is based on a separation I have not made, namely, between the state and civil society, considering the state from an ethical point of view while restricting the interest of individuals as the characteristic trait of civil society (*Grundlinien der Philosophie des Rechts*, § 258 (p. 329)). This is not the proper place to evaluate these views, and I already indicated in the introduction (note 7, *supra*) that Hegel’s concept of ‘freedom’ is not inquired here, so that I suspend judgment on the matter here, as is justified, given the fact that I started without the aspiration to take a comprehensive stance (cf. my remark to this effect in the introduction).

<sup>274</sup> Cf. J. Locke, *Two Treatises of Government*, An Essay of Civil Government (the second Treatise), Ch. 6, § 57 (p. 370).

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freedom as possible is beneficial for both the (liberal democratic) state as a whole and citizens themselves. However, as the phrase ‘as much as possible’ indicates, it is significant to define the limits (if any) of freedom carefully. This prompts the question to what extent equality and freedom are compatible. Since part 1 of the inquiry emphasized the importance of basic equality, and specifically basic rationality, it would seem appealing to connect it with freedom, thus consolidating the model of the liberal democratic state. The merits and difficulties of such a position are inquired in chapter 9, where Dworkin’s position is examined. An alternative for it is presented in chapters 10 and 11, where a demarcation line to limit freedom is defended. Mill’s harm principle provides the frame of reference here; the ignore principle, as my own alternative is called, seeks to find the optimal outcome in balancing various interests.

The foregoing raises the question of whether the state can adopt a neutral stance, and how it should respond to those who deny certain principles of a liberal democratic state, notably those defended in part 1 of this study. In other words: what should the state’s position be towards those who deny that people are equal, e.g. on the basis of racial differences? This is the central issue in chapters 12 to 15. I will argue that it is not the task of a liberal democratic state to decide what citizens should think, but that, in line with what is maintained in chapters 10 and 11, equal *treatment* should be guaranteed. In this light, Rawls’s and Habermas’s positions are examined critically. Finally, in chapter 16, some attention is devoted to the subject matter of the guarantees to continue a liberal democratic state, and more generally, a democratic state. It would seem that such a state might be undermined by its own principles, a majority being able to radically change it to a form of government that is ultimately incompatible with those very principles. Such a possible outcome is radical enough to merit attention in a study such as this one.

### 7.5 Summary and relation to chapter 8

The purpose of this chapter was primarily expository. I have indicated what freedom is to be taken to mean here, negative freedom being the decisive concept, and what the reader is to expect from the following chapters. Chapter 8 intends to indicate why freedom is important at all. It may in a sense be considered a continuation of chapter 7, and some of the reasons adduced there may appear obvious, but its presence is prompted by the need to present a complete and systematic account; while the next chapter’s focus is not on presenting novel insights, the present study’s strength would arguably be diminished in its absence.

